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# Chapter 4: Garnishment

## CHAPTER 4 - GARNISHMENTS

### 4. GARNISHMENT

#### 4.1 DEFINITIONS AND TYPES OF GARNISHMENTS

##### 4.11 Purpose:

A garnishment is a proceeding in which a third party (the "garnishee") who has money or other property belonging to the debtor-Defendant is required to turn over such money or property to the court.

**4.12 Pre-judgment Garnishments Should Not Be Heard in Magistrate Court** - pre-judgment garnishments should only be filed in a court of record such as state or superior court [1984 Op. Atty. Gen. U83-50. See also OCGA 15-10-2(5)]. Similarly, garnishments upon tax assessments are returnable only to state or superior court [OCGA 48-3-12].

**4.13 Post-judgment "Traditional" Garnishment** - may be filed after *money judgment* has issued from court of Georgia or federal court sitting in Georgia [OCGA 18-4-60].

**NOTE** - An order for child support, alimony, installments to accomplish equitable division of property, or any similar figure subject to mathematical computation by reference only to the language of the order is a "money judgment" [*Stoker v. Severin*, 292 App. 870, 665 SE2d 913 (2008); 253 App. 248, 558 SE2d 791 (2002); 154 App. 670, 269 SE2d 519 (1980)], an order to pay medical expenses, college tuition, "repairs deemed necessary by both parties" or the like is not [212 App. 651, SE2d 847 (1994)]. Periodic amount due for the last seven years are not dormant and may be enforced directly; amounts between seven and ten years old are "dormant" and must be revived outside of the garnishment in order to be collected [*See Taylor v. Peachbelt Props., Inc.*, 293 App. 335, 667 SE2d 117 (2008)].

A judgment debtor on a support order may pursue both contempt and garnishment at the same time until all current obligations under the order are satisfied [*Stoker* [; 155 App. 593, 271 SE2d 725 (1980)].

**4.14 Continuing Garnishment** - may be filed after judgments against employers only and provides for the garnishment to proceed for 179 days (see 4.6 below).

**NOTE** - Continuing garnishment filed against non-employer is treated as regular "one-shot" garnishment [172 App. 773, 324 SE2d 595 (1984)].

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- 4.15** Continuing Support Garnishments - may be filed for collection of periodic support of a family member. Garnishment is directed against earnings and continues until back amounts are satisfied (see [4.7](#)).

### 4.2 PERSONS AND PROPERTY SUBJECT TO GARNISHMENT

**4.21** Debts: [OCGA 18-4-20(b)]

- A. Owed by the garnishee to the Defendant at the time of service of summons of garnishment upon the garnishee. Test is whether Defendant could recover property by direct suit against garnishee [Anderson v. Burnham, 12 Bankr. 286 (Bankr. N.D. Ga. 1981); Hiatt v. Edwards, 52 App. 152, 182 S.E. 634 (1935)].
- B. Accruing from the garnishee to the Defendant from the date of service to the date of the garnishee's answer.

NOTE - There are specific provisions relating to earnings [see OCGA 18-4-20] (see [4.27](#)).

- 4.22** Property or Monies Within Possession or Control - all property, money or effects of the Defendant in the possession or control of the garnishee is subject to garnishment [OCGA 18-4-20(c)]. A check is an asset subject to garnishment [248 Ga. 597, 285 SE2d 21 (1981)].
- 4.23** Collateral Securities - are not subject to garnishment if there is an amount owed on the debt for which such securities were given as collateral [OCGA 18-4-20(c)].
- 4.24** State Salaries - sovereign immunity is waived and money due employees or officials of the state, counties, or municipalities as salary for services may be garnished [OCGA 18-4-21]. Garnishment of state salaries are subject to the same limitations as garnishment of other earnings [15 USC 1673] (see [4.27](#)).

NOTE - State Salaries: when the judgment arises out of liability incurred in the scope of the officials' or employees' governmental employment while responding to an emergency, **garnishment invalid** [OCGA 18-4-21]. ALSO jurisdiction for issuing garnishment is restricted to court located in the county in which the warrant is drawn upon the treasury of the government or in which the check is issued for the salary.

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**4.25** Federal Salaries - pay of federal, U.S. Postal Service, and Postal Rate Commission employees may be garnished [5 USC 5520a]. Each federal agency has regulations on who may be served with the summons of garnishment by certified mail. As a practical matter one should call up the agency to find out who must be served. The waiver of sovereign immunity is only for the employee's pay, so that entry of a default judgment against the United States would probably be improper. Child support garnishments have absolute priority under federal law in contrast to most garnishments [compare [4.44C](#)].

**4.26** Bank Accounts - Joint and under 3rd Party Names

- A. Joint accounts - “A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions of each to the sums on deposit, unless there is clear and convincing evidence of a different intent” [OCGA 7-1-812(a); 151 App. 573, 260 SE2d 501 (1979); 193 App. 70, 386 SE2d 912 (1989) (make finding of fact as to no different intent)].
- Where the proceeds themselves come from jointly owned property, in absence of clear different intent, allocate equal shares [193 App. 70, 386 SE2d 912 (1989)].
- B. Third parties - A financial institution has no liability for failing to turn over a bank account or safety deposit box when the account maintained is the account of a corporation, limited liability company, partnership, foundation, trust, governmental entity or other incorporated or unincorporated association, or any fiduciary account or account governed by power of attorney or other written designation of authority *unless* the garnishment is against the defendant's capacity as a fiduciary of the account or the summons of garnishment alleges that the account is being used by the defendant for an improper or unlawful purpose [OCGA 18-4-92.1].

**Note** - The statute has no clear standard for determining how an account is "maintained," so it is likely that the bank may rely on the superficial appearances of the name on the account and signatures in a representative capacity.

**4.27** Restrictions on Garnishing Earnings:

- A. Definition - compensation paid or payable for personal services. May be called wages, salary, commission, bonus, or otherwise, and includes payments from a pension or retirement program [OCGA 18-4-20(a)(2)].

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### B. Disposable earnings

1. The part of an individual's earnings remaining after deductions of the amounts required by law to be withheld [OCGA 18-4-20(a)(1)].
2. Wages subject to withholding for child support, tax levies or bankruptcy orders are not considered deduction required by law.
3. However, if these orders have priority over the creditor garnishment and are 25% of disposable wages (see [C](#) below), then no amount can be withheld for the creditor garnishment [29CFR § 870.11(b)(2)].

### C. Amount - Except for family support obligations (see [D](#) below), the most that can be garnished from the Defendant's weekly pay is the lesser of:

1. 25% of his/her disposable earnings ("take-home" pay -see [B](#) above);
2. The remainder after subtracting 30 times the amount of the Federal minimum wage [OCGA 18-4-20(d)].

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EXAMPLE - Defendant brings home \$280.00 after deducting social security and withholding taxes every week:

1. 25% of \$280.00 = \$70.00
2. 30 times the minimum wage

$$\text{\$280.00} - 196.50 = \text{\$83.50} \text{ (\$6.55 as of 7/24/08: } 30 \times \text{\$6.55} = \text{\$196.50)}$$

Since \$70.00 is the smallest of the two answers, that amount is taken out of defendant's paycheck.

This would change as the minimum wage rises:

$$\text{\$7.25 as of 7/24/09: } 30 \times \text{\$7.25} = \text{\$217.50}$$

$$\text{\$280.00} - 217.50 = \text{\$62.50}$$

Here the smallest figure is \$62.50.

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### D. Garnishments for support obligations - if summons shows that it is for child support or alimony, 50% of earnings are subject to garnishment [OCGA 18-4-20(f)]. Lump-sum cash award in divorce decree not "alimony" but "property division" [191 App. 718, 382 SE2d 730 (1989) (but would be non-support money judgment (see [4.13](#))).

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**Example** - Assume two garnishments, one for a regular judgment creditor, one for child support order. If none of the child support accrued before the other creditor's judgment, then the regular creditor would get the first 25% of disposable wages and the child support creditor would get the next 25%. However, if child support amounting to 25% of disposable wages accrued prior to the other judgment, then 50% of the wages would all go to the child support creditor.

### 4.28 Other Exemptions:

- A. Pensions - funds or benefits from a pension or retirement program, until paid to or "in hands of" member or his/her beneficiary [OCGA 18-4-22; 165 App. 101 (1983)].

**NOTE - This exemption does not apply to garnishments for child support and alimony.**

- B. IRA's - can't garnish Individual Retirement Accounts except for "qualified domestic relation order" [173 App. 511, 326 SE2d 861 (1985); also see 256 Ga. 499 (1), 350 SE2d 439 (1986)]. "Qualified domestic relation order" is similar to a family support order (see 4.7) and is defined at 29 U.S.C. 1056 (d)(3).
- C. ERISA - pension benefits established under ERISA (federal law which covers most pension plans) cannot be garnished except for child support or alimony; however, employee welfare benefits are subject to garnishment [256 Ga. 499, 350 SE2d 439 (1986)]. Even for child support, ERISA pension funds may only be garnished when funds are currently due and payable to member or beneficiary and at limitations set forth under OCGA 18-4-20(d) (see 4.27C).
- D. Pensions of the following groups of people are not subject to garnishment:
1. firemen [OCGA 47-7-122];
  2. teachers [OCGA 47-3-28];
  3. peace officers [OCGA 47-17-103];
  4. sheriffs [OCGA 47-16-122];
  5. members of the General Assembly [OCGA 47-6-100];
  6. probate & superior court judges [OCGA 47-14-91];
  7. superior court clerks [OCGA 47-14-91];
  8. state court judges and solicitors [OCGA 47-10-120];
  9. district attorneys [OCGA 47-13-90]; and

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10. state or local government employees under the Employees Retirement System [OCGA 47-2-332].

E. Benefits of fraternal benefit societies [OCGA 33-15-20].

F. Wages up to \$2500 for deceased employees survived by a spouse or minor child [OCGA 33-7-4].

G. Wages of an involuntarily hospitalized and mentally ill person [OCGA 29-5-12].

H. Assistance to elderly, disabled or blind persons, including SSI, Social Security and VA payments [OCGA 49-4-35, -84, -58; 42 USC 407; 38 USC 5301(a)].

- Garnishment barred for traceable “monies” such as funds deposited in the recipient's bank account [151 App. 573, 260 SE2d 501 (1979) (social security); 155 App. 178, 270 SE2d 245 (1980); Philpott v. Essex County Welfare Bd., 409 U.S. 413 (1973) (SSI); Porter v. Aetna Casualty & Surety Co., 370 U.S. 159 (1962) (VA benefits)]. “Monies” are funds readily withdrawable in the form of cash - exemption once converted to other property such as a car [Porter (funds withdrawable on 30 day demand OK, not periodic investment)].
- Most federal benefits may be garnished for child support and alimony (see [4.75](#)).

**4.29** Garnishment of Non-resident's Earnings - Non-resident Defendant's earnings are probably subject to garnishment if checks are cut within the state; in other cases the authority seems conflicting [compare 173 App. 546, 327 SE2d 529 (1985); 159 App. 676, 285 SE2d 52 (1981); 196 App. 59, 395 SE2d 298 (1990)]. U.S. government pay can be garnished for child support although checks cut in another state [196 App. 59, 395 SE2d 298 (1990); but see 247 Ga. 260, 275 SE2d 42 (1981)].

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### 4.3 POST-JUDGMENT GARNISHMENT PROCEEDINGS ("traditional" garnishments):

#### 4.31 Affidavit: [OCGA 18-4-61].

##### A. Requirements:

1. Personal knowledge of the affiant (the Plaintiff, the Plaintiff's attorney at law or Plaintiff's agent);
2. Set forth that the Plaintiff has a judgment against the named Defendant;

**NOTE** - The Court of Appeals has recently stated in *dicta* that where periodic payments, such as child support, are involved that:

“the plaintiff's affidavit must specify the amount and due date of any payments the defendant allegedly failed to make. To sustain a traverse to such a garnishment, in which the defendant disputes the alleged nonpayment, in whole or in part, the defendant must produce proof of payment. The court will then resolve the issue of the amount subject to garnishment.” [*Stoker v. Severin*, 292 App. 870, 665 SE2d 913 (2008)].

There is no indication, however, that the failure to do so would be a nonamendable defect.

Prior authority had merely stated that it was incumbent on the Garnishor to **prove** the specific sums unpaid (rather than relying on general testimony as to the total sum due) before the defendant was required to come forward with evidence of payment [154 App. 670, 672(2), 269 SE2d 519 (1980)], and other cases allowed garnishment on orders for periodic payments without any discussion of affidavit requirements [e.g., 253 App. 248, 558 SE2d 791 (2002); 155 App. 593, 271 SE2d 725 (1980)](see [4.13](#)).

3. Amount claimed to be due;
4. The name of the court in which the decision was rendered and the case number.

##### B. Approval: [OCGA 18-4-61].

1. Made before and approved by a judge of the court in which the garnishment proceeding is filed,  
OR
2. A judge of the court that rendered the judgment upon which the garnishment is based,  
OR
3. A judge of any court of record,  
OR
4. It may be made before any officer authorized to administer oaths and it is then approved by such judge,  
OR



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5. It may be made before any officer authorized to administer oaths and it is then approved by clerk (or deputy clerk) pursuant to rules established by the judges of that court for the approval of such garnishments.

Failure of judge or clerk to approve is amendable prior to judgment [Horizon Credit Corp v. Lanier [220 App. 362, 469 SE2d 452 (1996)]].

### **4.32** Summons and Answers: [OCGA 18-4-62]

- A. General - summons to garnishee requires filing an answer stating what money or other property is subject to garnishment. May include Defendant's Social Security No. on summons.
- B. Corporations - service of summons on garnishee corporation (OCGA 18-4-23):
  1. First try to serve "agent in charge of office or other place of business where the Defendant is employed."
  2. "In the event such service cannot be made, then service ... upon the agent in charge of either the registered office or the place of business of a corporation shall be sufficient."
- C. Federal Agency and Post Office - set forth under federal regulations for the agency: It is usually simplest to ask agency about the correct mode of service (see **4.25**).
- D. State or subdivision - must be upon:
  1. Person authorized by law to draw the warrant upon the treasury or to issue a check for the salary;  
OR
  2. Chief administrative officer of the political subdivision, department, agency, or instrumentality [OCGA 18-4-21].

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E. Financial institutions - a summons upon a financial institution “shall state with particularity all of the following information, to the extent reasonably available to the plaintiff”:

1. Defendant's name, nicknames, aliases, trade names, former or maiden names;
2. Service address, current and past addresses of the defendant;
3. Defendant's social security or federal tax ID number;
4. Account, identification or tracking numbers known or suspected by the plaintiff to be used by the financial institution in handling defendant's property. [OCGA 18-4-20(I)].

The bank can be relieved of liability under the garnishment where it has made a good faith effort to respond to the garnishment and the failure to locate property was due to plaintiff's failure to provide the above information. The court examines the accuracy and completeness of the information provided by plaintiff with the manner in which the bank maintains its records, its compliance with its own procedures and with reasonable commercial standards prevailing in the area. Financial institutions are also immune to liability for freezing of accounts or delivery of monies into court reasonably required by a good faith effort to comply with the garnishment [OCGA 18-4-92.1; *compare* 221 Ga. App. 471, 471 SE2d 554 (1996) which this statute was presumably intended to “fix”].

F. Time for Answer - the answer must be filed with the court issuing the summons (1) not sooner than 30 days and (2) not later than 45 days after the service of such summons and (3) must be accompanied by the money or other property subject to garnishment [OCGA 18-4-62].

<p><b>NOTE</b> - Financial institutions (<i><b>banks</b></i>) can file early answer if no account, as can <i><b>former employers</b></i> who have no funds of defendant [OCGA 18-4-62]</p>
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G. Inability to answer - if the garnishee is unable to answer as provided, such inability should appear in its answer, together with all the facts plainly, fully, and distinctly set forth [OCGA 18-4-82].

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- H. Wages specified - if the garnishee owes the Defendant any sum for wages, the answer must also state specifically when the wages were earned by Defendant and whether they were earned as daily, weekly, or monthly wages [OCGA 18-4-82].
  - I. Additional summons of garnishment - may issue from time to time on the same affidavit until the judgment is paid, or the garnishment proceeding is otherwise terminated [OCGA 18-4-63].
  - J. Answer for multiple summons for the same Defendant - the garnishee must state in each answer:
    - 1. that the money or other property is being delivered to the court subject to the claims of all the cases,  
AND
    - 2. the numbers of all such cases in each answer [OCGA 18-4-82].
- 4.33** Notice to Defendant: [OCGA 18-4-64] - written notice must be served on the Defendant in at least one of these ways – statute is strictly construed [Cook v. NC Two, L.P., 289 Ga. 462, 712 SE2d 831 (2011)]:
- A. The notice shall consist of a copy of the summons of garnishment or of a document containing the same information as the summons.
  - B. Personal service by authorized agent (pursuant to OCGA 9-11-4) - the Plaintiff has the burden of giving the judgment debtor, or Defendant, notice of the garnishment by having a copy of the summons of garnishment served on Defendant "as soon as is reasonably practicable" after filing the garnishment with the clerk (In contrast, other forms of service, as by mail, must be within 3 business days).

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### C. Service by Mail:

1. mail a copy of the summons of garnishment to the Defendant at Defendant's last known address by registered or certified mail, return receipt requested,  
AND
2. evidence of mailing or receipt must be filed with the clerk of court,  
OR
3. The notice may be sent by ordinary mail to the address at which the Defendant was served in the suit resulting in the judgment on which the garnishment is based, if garnishment is commenced within sixty days after the judgment was obtained.
4. Service by mail must be within three business days after service of the summons of garnishment on the garnishee [Cook v. NC Two, L.P., 289 Ga. 462, 712 SE2d 831 (2011)].

D. If the Defendant is a nonresident, has absconded, or concealed himself/herself, and this is shown by affidavit, service on the garnishee alone suffices unless Plaintiff knows the mailing address, in which case notice to the judgment debtor must be mailed within 3 business days.

E. The Plaintiff or Plaintiff's agent may also deliver personal notice within 3 business days.

F. If the judgment debtor (Defendant) is not served with a copy of the summons of garnishment immediately after the garnishment is filed the proceeding is invalid [OCGA 18-4-64(2)-(7)].

### 4.34 Proceedings After Answer (uncontested cases)

- A. Payout - fifteen days after the answer is filed (if no traverse or claim has been filed and money has been delivered to the court by garnishee), the clerk pays this money to Plaintiff or his/her attorney on his/her application.
- B. Answer but no Money - If money or other property admitted in answer to be subject to garnishment is not delivered into the court, judgment is rendered for the Plaintiff against the garnishee for this money or property and execution issues of the judgment [OCGA 18-4-89].

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**NOTE** - When certified mail notice is sent to the garnishee and delivery is refused, garnishee has actual notice [208 App. 694, 431 SE2d 712 (1993)].

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- C. Property other than Money - If other property is delivered into court, the sheriff, marshal, constable or other judicial office sells the property in the manner provided by law for the sale of property levied under an execution and the proceeds of such sale are delivered to the Plaintiff [OCGA 18-4-89].
- D. Safe Deposit Boxes - where the defendant has a safe-deposit box, the property is not automatically deposited with the Court, but the answer states the existence of the box and the contents are held until the earlier of:
  - 1. A court order releasing the contents or ordering that they be turned over to the court;
  - 2. Passage of 120 days from the answer unless the time for holding the contents is extended by the court [OCGA 18-4-84].

### **4.35 Default:**

- A. Time - Garnishee becomes automatically in default after failing to file an answer within forty-five days [OCGA 18-4-90].
- B. Opening Default - The default may be opened as a matter of right upon payment of costs within 15 days. If the case is still in default after the expiration of the 15 days, judgment by default may be entered at any time thereafter against garnishee for the amount claimed to be due on the judgment obtained against the Defendant [OCGA 18-4-90].

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C. Modifying Default Judgment - After a default judgment is entered against garnishee (and after the period to open described in B above), upon payment of all accrued costs of court, the garnishee may have the judgment modified so that the amount of the judgment is reduced to an amount equal to the greater of \$50 or \$50 plus 100 percent of the amount by which the garnishee was indebted to the Defendant:

1. Motion must be filed not later than 60 days from the date the garnishee receives notice of the entry of a default judgment.
2. On trial of the motion, the burden of proof is on any Plaintiff who objects to the timeliness of the motion [OCGA 18-4-91].
3. The court may treat a motion labeled something else, such as a motion to set aside, as a motion to modify judgment where the facts warrant that relief [240 App. 419, 523 SE2d 629 (1999)].
4. Before altering the amount of the judgment, the parties must have the opportunity for an evidentiary hearing [240 App. 419, 523 SE2d 629 (1999)].

D. Setting Aside Judgment OCGA 18-4-115(b) and 18-4-91 are for when default judgment is properly admitted; where process or service is improper the general provisions for setting aside judgments are used [Lewis v. Capital Bank, 311 Ga.App. 795, 717 SE2d 481 (2011)].

NOTE - When certified mail notice is sent to the garnishee and delivery is refused, garnishee has actual notice [208 App. 694, 431 SE2d 712 (1993)]. The sixty days appears to run from when the notice of certified mail is delivered, not from when the party actually receives the notice [See 228 App. 827, 492 SE2d 687 (1997)]. Further, notice is adequate when there is no legible file date stamp on a copy of the default judgment [308 Ga.App. 597, 708 SE2d 560 (2011)].

**4.36** Third Party Claims - claims by third parties, such as other judgment holders or persons claiming superior rights to the funds garnished may be made at any time prior to the distribution of funds [Akridge v. Silva, 298 App. 862, 681 SE2d 667 (2009); OCGA 18-4-95] - such claims are not subject to the 15 day time limit for traverses [OCGA 18-4-89].

- Distribution to the bankruptcy court pursuant to a stay, followed by return to the garnishment court, does not preclude claim after return [Akridge]

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### **4.36 Dissolution of Garnishment:**

A. When dissolved - it is the duty of the clerk of the court in which the garnishment proceedings are pending to issue a release of garnishment if:

1. The Plaintiff or his/her attorney requests it in writing;

OR

2. The amount claimed due together with the costs of the garnishment are paid into court;

OR

3. A dissolution bond is filed by the Defendant and approved by the clerk;

OR

4. A judge enters an order, after a hearing, directing that such garnishment be released;

OR

5. The garnishment is dismissed [OCGA 18-4-6].

B. Effect of Release:

1. Relieves the garnishee from any obligation to file an answer

AND

2. Authorizes the garnishee to deliver to the Defendant any money or other property in the garnishee's possession belonging to the Defendant.

3. Release does not operate as dismissal of the garnishment proceedings [OCGA 18-4-80].

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### 4.4 CONTESTED PROCEEDINGS

**4.41** Stays - No Attack Upon Validity of Judgment in Garnishment [OCGA 18-4-65(b)] -the validity of the judgment upon which the garnishment is based may not be attacked in the garnishment proceeding but must be attacked by a proceeding in the court which rendered the underlying judgment. (If your court rendered the judgment, you could, of course, consolidate the hearing of the garnishment with hearing the challenge of the judgment.) The garnishment court may, in its discretion, do the following:

1. Release the garnishment;
2. Stay the garnishment (including any necessity to answer by the garnishee);
3. Stay the pay-out of funds from the court.

One should at least stay the pay-out of any funds from the court registry unless the challenge to the judgment is frivolous or legally insufficient; in contrast, one would not normally release the funds from court to the defendant unless the challenge to the underlying judgment was solid and the effect of the garnishment upon the Defendant was unusually severe.

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**NOTE** - challenge that the court judgment is not a “money judgment” is a defense to be asserted by traverse in the garnishment [Stoker v. Severin, 292 App. 870, 665 SE2d 913 (2008)]; (see [4.13](#)).

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#### **4.42** Traverse by Plaintiff (of Garnishee's Answer):

- A. Time - Plaintiff must traverse the garnishee's answer within 15 days of garnishee's answer or the garnishee is automatically discharged of further liability with respect to the summons so answered and the garnishment proceeding is at an end [OCGA 18-4-85].
- B. Content - the traverse states that the garnishee's answer is untrue or legally insufficient. Such statement places in issue all questions of law and fact concerning garnishee's answer [OCGA 18-4-86].

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**NOTE** - Limited jurisdiction court may not credit expenditures for child; this may only be done in equitable action [Davis v. Davis, 220 App. 745, 470 SE2d 268 (1996) (en banc), *overruling* 170 App. 219, 221 (2), 316 SE2d 589 (1984), 157 App. 35, 276 SE2d 259 (1981), and 150 App. 602, 258 SE2d 282 (1979)]. Whether it is appropriate to dismiss the claim, however, as was done in *Davis*, rather than transfer the case to superior court is questionable.

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- C. Issue upon trial of traverse is whether garnishee has property of Defendant, not whether garnishee knows the property belongs to the Defendant; thus, garnishee may act at own peril in accepting defendant's assurances that property belongs to another and releasing it from garnishment; in doubtful cases garnishee should submit issue to court [221 Ga. App. 471, 471 SE2d 554 (1996); OCGA 18-4-82] (see 4.26 and 4.32E for special rules involving financial institutions).
- D. Judgment - if Plaintiff prevails in attack upon answer and the court finds the answer to be incorrect, the court shall disallow any expenses for the garnishee (see 4.45) and enter judgment for the amount paid into court plus any other money or property subject to garnishment which garnishee failed to pay into court [OCGA 18-4-92].

### 4.43 Traverse by Defendant:

- A. Grounds [OCGA 18-4-65(a)] - Defendant may challenge the existence of a judgment, its satisfaction, its status as a "money judgment" or any other matter in bar of the judgment except its validity (see 4.41). The traverse should state that the affidavit of garnishment is untrue or legally insufficient.

NOTE - If the traverse attacks the validity of the judgment, the court may wish to treat the traverse as a request for stay or release of the garnishment (see 4.41)

- B. Time [OCGA 18-4-93] - a traverse by the defendant may be filed any time before a judgment is entered on the garnishee's answer (e.g., after default or an answer without payment of funds admitted due) or before the money or other property is distributed (which cannot be sooner than 15 days after garnishee's answer [OCGA 18-4-89]).
- C. Effect [OCGA 18-4-81] - the garnishment continues and garnishee is required to pay funds into court unless the Defendant files a bond with good security. The funds or other property are held in the registry of the court until the traverse is ruled upon.

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### D. Procedure after traverse [OCGA 18-4-93]:

1. The court shall order a hearing within ten days (as a matter of right to the Defendant) and no further summons of garnishment be issued or any funds or property disbursed.
2. Except for the Defendant's right to a hearing within ten days, the matter is thereafter handled like any other contested case, including procedures on appeal [OCGA 18-4-1].
3. If Defendant prevails, funds should be restored to him/her unless claim has been filed (see 4.44).

### 4.44 Other Claims on Funds in Court:

- A. Filing claim - any person may file a written claim *under oath* stating that the claim is superior to the Plaintiff to the funds paid in court and become a party to all further proceedings [OCGA 18-4-95; 231 App. 21, 497 SE2d 627 (1998) (if claim not under oath, claimant is without standing to contest garnishment)].
- B. Conflicting cases - where property is subject to the claims of more than one garnishment, distribution of funds requires a motion and hearing with all interested parties noticed [OCGA 18-4-96].
- C. Priorities in judgments:
  1. Judgments have priority from date of judgment [OCGA 9-12-80]. Therefore, oldest judgment gets all money until satisfied (after court costs) even if newer judgment was first or only party to file garnishment [144 App. 769, 242 SE2d 365 (1978)].
  2. Exception - Support Orders:
    - a. Support orders have no lien for future payments [157 App. 412, 277 SE2d 770 (1981)].
    - b. In comparing support order with other judgment, support order has priority for sums due at date of other judgment, other judgment has priority for sums accrued after date of its rendition.
    - c. Non-support judgment-creditor with priority gets first part of earnings (usually 25% (see 4.27)); next part up to 50% goes to holder of support order (if garnishment for support has been filed). [For federal employee pay, see 4.25]

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**4.45** Garnishee's Claims for Expenses [OCGA 18-4-97] - garnishee is entitled to recover actual reasonable expenses, including attorney's fees, in making a true answer of garnishment.

A. By deduction - the garnishee may deduct from the amount paid into court \$25 or 10% of the amount paid into court, but not to exceed \$50, as reasonable attorney's fees which are taxed as a cost of court.

B. If actual expenses are greater, garnishee may petition court for additional fees and court may award reasonable, actual fees after hearing.

**4.46** Order of Trial - after the garnishee's answer is filed:

1. the Defendant's traverse is tried first;
2. Plaintiff's traverse is tried second;
3. claims are tried last [OCGA 18-4-88].

The court retains the money or other property subject to garnishment until trial of any claim filed [OCGA 18-4-97(a)-(c)].

**4.5** (Reserved)

## CHAPTER 4 - GARNISHMENTS

**4.6 CONTINUING GARNISHMENT - SIX MONTH (179 days) - can be used by any judgment holder against employer.**

**4.61 General Provisions:**

- A. Generally same procedures - OCGA 18-4-111 methods, practices, and procedures for continuing garnishment are the same as for any other garnishment, unless otherwise specifically provided.
- B. When available - a continuing garnishment is available for any money judgment against any garnishee who is an employer [OCGA 18-4-110]. However, if not an employer, garnishee must still answer garnishment as though it were a traditional, "one-shot" garnishment (see [4.2](#)) [172 App. 773, 324 SE2d 595 (1984)].
- C. All debts, property, effects (see [4.2](#)) owed by the garnishee to the Defendant from the date of service of the summons of continuing garnishment upon the garnishee to and including the 179th day thereafter are subject to continuing garnishment [OCGA 18-4-111].

**4.62 Affidavit, Summons, and Notice [OCGA 18-4-112]:**

- A. An affidavit for continuing garnishment must state that Plaintiff believes the garnishee to be the Defendant's employer,

AND

- B. The affidavit must also be judicially approved in one of the five methods set out in OCGA 18-4-61 (see [4.31B](#)) as containing the required information.
- C. Upon the filing of this affidavit with the clerk of any court having jurisdiction over the garnishee, (1) the clerk issues a summons of continuing garnishment and (2) only one summons may issue on one affidavit.
- D. The Defendant must be given notice of the issuance of such summons, using any one of the methods set out in OCGA 18-4-64 (see [4.33](#)).

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### **4.63** Answer and Default Judgment Upon Failure to Answer: [OCGA 18-4-113]

- A. The garnishee-employer must file an answer, accompanied with the money, etc., subject to continuing garnishment, at least once every 45 days, with the last answer on or before the 195th day after garnishment served. Answers must cover entire 179 day period of garnishment.
- B. Failure to do so will result in a default judgment.
- C. Provision is also made for final answer if the employment relationship is terminated.

NOTE- Garnishee must still answer as though traditional "one-shot" garnishment even if never an employer [172 App. 773, 324 SE2d 595 (1984)].

- D. The provisions for opening up default and for obtaining relief from default judgment are the same as for "one-shot" garnishments (see [4.35](#)).

### **4.64** Traverses [OCGA 18-4-114] - Plaintiff's traverse to the garnishee's answer and the Defendant's traverse in continuing garnishment proceedings are the same as in "one-shot" garnishments (see [4.42-44](#)).

### **4.65** Citations: CASES

Bankruptcy stay - Where *garnishee* files bankruptcy, automatic stay does not stay garnishment since garnishment seeks not garnishee's own property but only sums payable to defendant. Without answer, default judgment may be entered which would convert defendant's pre-petition into a new, post-petition debt owed by garnishee.

Interest continues to accrue during garnishment and while funds are in registry of court [223 App. 643, 478 SE2d 400 (1996)].

## CHAPTER 4 - GARNISHMENTS

### 4.7 FAMILY SUPPORT CONTINUING GARNISHMENTS

#### 4.71 Requirements: OCGA 18-4-131

A. Support order - includes:

1. any order of a court of this state;
2. final administrative order of Department of Human Resources;
3. any "order" intended to include probation order in criminal abandonment case.

B. Periodic Payments - regular on daily, weekly, monthly or similar specified frequency.

C. Garnishment for earnings - garnishee must owe defendant for earnings. Earnings are defined as any periodic form of payment due to an individual, regardless of source, including wages, salary, commission, bonus, interest, workers' compensation, disability, or payments pursuant to a pension or retirement program [OCGA 18-4-131].

NOTE - This definition of earnings here is different from the definition of earnings in OCGA 18-4-20 (for instance, workers' comp and disability payments are not earnings under OCGA 18-4-20(a)) [compare [4.27A](#)]. OCGA 18-4-133(b), however, provides that in computing the amounts to be paid into court, the garnishee is to use the (50%) limitation of OCGA 18-4-20(f). Thus, where the periodic payments are not wages or pensions, it is not clear whether the garnishee pays 50% or 100% of the amount owed to the defendant.

Garnishee must still answer as though traditional "one-shot" garnishment even if debt is not earnings [172 App. 773, 324 SE2d 595 (1984)].

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### 4.72 Information Required [OCGA 18-4-132]:

- A. All normal information of six-month continuing garnishment (see 4.31, 4.62);
- B. Defendant in arrears for support over one month;
- C. Amount of arrearage;
- D. Periodic amount due in future;
- E. Termination date including when each child turns 18;
- F. Certified copy of judgment;

NOTE - Can amend at any time.

### 4.73 How Money Applied: [OCGA 18-4-134]

- A. First apply money to support accruing since affidavit or last answer.
- B. If garnished funds are not enough, add balance to original arrearage.
- C. If garnished funds satisfy accruing support, apply balance to reduce original arrearage.

**NOTE** - Limited jurisdiction court may not credit expenditures for child; this may only be done in equitable action [*Davis v. Davis*, 220 App. 745, 470 SE2d 268 (1996) (en banc), *overruling* 170 App. 219, 221 (2), 316 SE2d 589 (1984), 157 App. 35, 276 SE2d 259 (1981), and 150 App. 602, 258 SE2d 282 (1979)]. Whether it is appropriate to dismiss the claim, however, as was done in *Davis*, rather than transfer the case to superior court is questionable [see 284 Ga. 369, 667 SE2d 348 (2008)].

## CHAPTER 4 - GARNISHMENTS

### 4.74 Duration [OCGA 18-4-134] - Garnishment continues until:

- A. Employment terminated, OR
- B. Entire arrearage plus all support accruing during garnishment is paid.

NOTE - Garnishee must still answer as though traditional "one-shot" garnishment even if he/she never was employer [172 App. 773, 324 SE2d 595 (1984)].

- C. Answers may be 45 days or less since service or last answer.

### 4.75 Availability of Federal Benefits for Child Support Garnishment

- A. U.S. Government consents to garnishment of most benefits (including Social Security benefits and SSDI) and all salaries for child support under 42 U.S. 659 and regulations under 5 CFR Part 581;
- B. The manner of serving the Federal Government is specified by regulation for each agency;
- C. Normally, a state court has no cause to determine whether jurisdiction over such funds exist - while such funds are in the hands of the U.S. government, the agency is not subject to the court's jurisdiction if not served in accordance with federal regulations
  - Exemption issues usually arise only over bank accounts containing unmingled funds derived from exempt sources

### 4.76 Another Judgment - creditor may file claim on money (to determine priorities, see [4.44C](#)).

NOTE - **OCGA 18-4-7 forbids firing an employee** for being garnished for any one indebtedness, no matter how many garnishments are filed with respect to that debt.



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### 4.8 Citations: CASES

Bankruptcy stay protects *garnishee* from entry of default judgment. Where judgment debtor filed garnishment for wages of employee, stay protected garnishee against effects of default and default judgment was not considered a new post-petition debt [264 Ga. 533, 448 SE2d 688 (1994)].

Interest continues to accrue during garnishment and while funds are in registry of court [223 App. 643, 478 SE2d 400 (1996)].

Jurisdiction - limited jurisdiction court is without jurisdiction in child support garnishment to allow equitable setoff for expenditures made for child's benefit [Davis v. Davis, 220 Ga. App. 745, 470 S.E.2d 268 (1996) (en banc), overruling 170 Ga. App. 219, 221 (2), 316 S.E.2d 589 (1984), 157 Ga. App. 35, 276 S.E.2d 259 (1981), 150 Ga. App. 602, 258 S.E.2d 282 (1979)]. In Davis, the disallowance of the setoff was upheld, but it may be that the correct procedure is actually to transfer the case to superior court with concurrent jurisdiction over all issues [see Blackmon v. Tenet Healthsystem Spalding, Inc., 284 Ga. 369, 667 SE2d 348 (2008) (dismissal improper and transfer proper where court did not have jurisdiction to permit non-statutory party to bring case)].

Lack of Jurisdiction – Defective process – motion to set aside judgment – OCGA 18-4-115(b) and 18-4-91 are for when default judgment is properly admitted; where process or service is improper the general provisions for setting aside judgments are used [Lewis v. Capital Bank, 311 Ga.App. 795, 717 SE2d 481 (2011) OCGA 9-11-60(d) for courts of record].